

1 Filed by:  
2 Fred E. McKelvey  
3 Senior Administrative Patent Judge  
4 Board of Patent Appeals and Interferences  
5 Mail Stop Interference  
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Paper 66

10  
11 UNITED STATES PATENT AND TRADEMARK OFFICE  
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13  
14 BEFORE THE BOARD OF PATENT APPEALS  
15 AND INTERFERENCES  
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17  
18 STEPHEN ROBERT BYRN, DAVID ANDREW COATES,  
19 KAREN SUE GUSHURST, JOSEPH FRANCIS KRYZZANIAK,  
20 ZHENG JANE LI, HENRY GRANT MORRISON II,  
21 AERI PARK and PETRINKA IVANOVA VLAHOVA,  
22

23 Junior Party  
24 Patent 6,605,729 B1,  
25

26 v.  
27

28 JUDITH ARONHIME, RAMY LIDOR-HADA, VALERIE NIDDAM,  
29 RETITAL LIFSHIRTZ and GUY SHAMBURSKY,  
30

31 Senior Party  
32 Application 09/997,126.  
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34  
35 Patent Interference 105,384 McK  
36 Technology Center 1600  
37

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38  
39 Entered: 20 September 2006  
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41 ORDER REDECLARING INTERFERENCE  
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43 Pursuant to the MEMORANDUM OPINION and ORDER (Paper 64)  
44 of the merits panel granting Byrn Motion 2 and the MEMORANDUM  
45 OPINION and ORDER (Paper 65) granting Aronhime Motion 1, it is  
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1 ORDERED that the interference is redeclared by substituting  
2 Count 2 for Count 1, with the matter in **bold** in Count 2 as set out  
3 below being added to Count 1; matter in [brackets] added for  
4 clarification.

5 Count 2

6 A crystalline [Aronhime] Form VIII atorvastatin hemi-  
7 calcium and solvates thereof characterized by a powder X-ray  
8 diffraction pattern generated using CuK<sub>α</sub> radiation with peaks  
9 at:

10 4.8  
11 5.2  
12 8.0  
13 9.2  
14 9.6  
15 19.0  
16 20.0  
17 24.0 and  
18 29.0

19 ± 0.2 degrees two-theta

20 or

21  
22 a crystalline [Byrn] Form X atorvastatin or a hydrate thereof  
23 having an X-ray power diffraction containing the following 2θ  
24 values measured using CuK<sub>α</sub> radiation:

25 4.7  
26 5.2  
27 5.8  
28 6.9  
29 7.9  
30 9.2  
31 9.5  
32 10.3 (broad)  
33 11.8

1	16.1
2	16.9
3	19.1
4	19.8
5	21.4
6	22.3 (broad)
7	23.7 (broad)
8	24.4 and
9	28.7

10  **$\pm 0.2$  degrees two-theta.**

11 FURTHER ORDERED that claims designated as corresponding to  
12 Count 1 as set out in the DECLARATION (Paper, 1) are designated as  
13 corresponding to Count 2.

14 FURTHER ORDERED that benefit accorded in the DECLARATION  
15 (Paper 1) is accorded as to Count 2.

16 FURTHER ORDERED that Aronhime is accorded benefit for  
17 the purpose of priority of Provisional Application 60/250,072, filed  
18 30 November 2000.

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**Townes, Yolunda**

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**Subject:** Interference #105384 (McK)  
**Attachments:** 105384\_063.pdf; 105384\_064.pdf; 105384\_065.pdf; 105384\_066.pdf

Memorandum Opinion and Order - Paper 63

Memorandum Opinion and Order - Paper 64  
(Granting Byrn Motion 2 and Dismissing  
Aronhime Motion 6)

Memorandum Opinion and Order - Paper 65  
(Granting Aronhime Motion 1 in part)

Order Redeclaring Interference - Paper 66

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